

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-313-000

ORDER REJECTING TARIFF SHEETS AND REQUIRING COMPLIANCE FILINGS

(Issued February 7, 2006)

1. On August 6, 2004, the Commission issued an order approving the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Transmission and Energy Markets Tariff (TEMT), which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state region.<sup>1</sup> The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity.

2. This order rejects proposed revisions to the TEMT that the Midwest ISO submitted in response to Commission directives but nominally pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), that provide for the allocation of FTRs to market participants serving load with less-than-seasonal network resources. The order directs the filing of revisions to the TEMT that would, for the near-term, instead

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g and compliance*, 111 FERC ¶ 61,043 (Compliance Order III), *reh'g denied*, 112 FERC ¶ 61,086, *order on compliance*, 113 FERC ¶ 61,083 (2005). The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

allocate FTRs first to market participants with seasonal or longer-duration designated network resources and then allocate any remaining FTRs to market participants with less-than-seasonal network resources.

## **I. Background**

3. The Commission required the Midwest ISO to offer nomination of monthly, peak and off-peak FTRs in the TEMT II Order,<sup>2</sup> and required further clarification of the relationship between short-term, annual and longer-term network resource designation and eligibility for FTRs in the FTR allocations.<sup>3</sup>

4. In an order issued on May 26, 2005, the Commission accepted a Midwest ISO proposal to provide seasonal FTRs, and, as relevant here, required the Midwest ISO to evaluate and discuss with stakeholders additional flexibility in seasonal and other less-than-annual designations and to submit a new proposal by January 6, 2006.<sup>4</sup>

## **II. Compliance Filing**

5. On December 9, 2005, in response to the May 26 Order, but filed pursuant to section 205 of the FPA, the Midwest ISO submitted proposed revisions to the TEMT (December 9 Filing).

6. In order to accommodate market participants that serve load with less-than-seasonal network resources, the Midwest ISO proposes a new section 43.2.3a in the TEMT that allows network integration transmission service customers to register a MW quantity of FTR entitlements equal to or greater than the forecast peak network load for the FTR allocation period. In the event a market participant does not have long-term qualifying network resources<sup>5</sup> equal to or greater than forecast peak network load, the

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<sup>2</sup> See TEMT II Order at P 190.

<sup>3</sup> *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 at P 81-82 (2004).

<sup>4</sup> *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,249 at P 30 (2005) (May 26 Order).

<sup>5</sup> Network resources are electric facilities capable of supplying energy, capacity and/or ancillary services, and that are located either in the Midwest ISO region or accessible to the region through contracted transmission service that is owned or leased by a network customer or whose output is under contract to a network customer and that

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Midwest ISO proposes to define and register FTR entitlements based on a pro rata share of all generation nodes within a balancing authority area<sup>6</sup> in which the network load is located. The Midwest ISO characterizes this method as a slice-of-system approach. The proposed revisions are also incorporated in section 43.2.4.

7. The Midwest ISO requests that the proposed revisions be made effective prior to January 9, 2006, the date that the FTR registration period commences and respectfully submits that a waiver of the 60-day prior notice requirement is justified because it will enable the Midwest ISO to implement the proposal regarding short-term FTRs in time for the upcoming, third annual FTR allocation.

### **III. Notice, Interventions and Protests**

8. Notice of the Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 76,803 (2005), with interventions and protests due on or before December 30, 2005. Consumers Energy Company, Wisconsin Electric Power Company (Wisconsin Electric), Ameren Services Company (Ameren),<sup>7</sup> FirstEnergy Service Company (FirstEnergy),<sup>8</sup> Cinergy Services, Inc. (Cinergy),<sup>9</sup> and Constellation Energy Commodities Group and Constellation NewEnergy, Inc. (collectively Constellation) filed timely motions to intervene and/or protests and comments. The Midwest ISO and Constellation filed answers on January 17, 2006.

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is designated per the terms of the TEMT. TEMT, Module A, section 1.121, third revised sheet no. 80 and section 1.217, first revised sheet no. 106.

<sup>6</sup> A balancing authority area is a collection of resources, transmission systems and loads within the metered boundaries of a balancing authority. A balancing authority is required to maintain resource to load interchange balance within a balancing authority area and support interconnection and frequency in real-time. TEMT, Module A, sections 1.17 and 1.18, fifth revised sheet no. 51.

<sup>7</sup> Ameren filed on behalf of its public utility operating companies Union Electric Company d/b/a Ameren UE, Central Illinois Public Service Company d/b/a Ameren CIPS, Central Illinois Light Company d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP.

<sup>8</sup> FirstEnergy filed on behalf of its affiliate FirstEnergy Solutions Corporation.

<sup>9</sup> Cinergy filed on behalf of its franchised public utility affiliates, Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat and Power Company.

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will reject the answers of the Midwest ISO and Constellation since their answers did not inform our decision-making process.

##### **B. The Midwest ISO Proposal and Its Stakeholder Process**

###### **1. The Midwest ISO Filing**

11. The Midwest ISO explains that, as directed by the May 26 Order, it conducted stakeholder discussions on the issue of short-term network resources and FTRs at Market Subcommittee meetings held on July 7, August 30, October 17, and November 1, 2005. The Midwest ISO states that during these discussions alternatives for implementing monthly or less-than-seasonal FTRs were discussed. According to the Midwest ISO, stakeholders rejected monthly FTR allocations because they would have required a substantial increase in the required number of allocation models to evaluate the data and would have created a corresponding increase in the time required to solve such models and allocate FTRs once the registration process is complete. Stakeholders also rejected a proposal to allocate monthly network resources through the conversion of seasonal FTRs due to concerns about potential gaming opportunities that may arise in the designation of network resources.

12. The Midwest ISO states that, on November 1, 2005, a majority of stakeholders voted in favor of a proposal to use a slice-of-system approach for defining less-than-seasonal FTR entitlements for network resources based on historical usage of such resources in the same balancing authority area.<sup>10</sup> The Midwest ISO also explains that it

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<sup>10</sup> The Midwest ISO provided an illustrative example of the slice-of-system method in its filing that showed how a market participant with network resources that covered only 25 MW of its peak load of 50 MW would obtain incremental FTRs for an additional 25 MW from all network resources in the balancing authority area in proportion to the share of historical usage provided by these resources to all market

believes the stakeholder-approved proposal is appropriate for implementation during the upcoming annual FTR allocation and requests acceptance of the proposed revisions prior to January 9, 2006, the date that the FTR registration period commences.

## **2. Comments and Protests**

13. Several commenters, specifically Ameren, Wisconsin Electric, Cinergy and FirstEnergy, express concern that the proposed tariff revision would result in additional pro-rationing of FTRs for market participants with designated long-term network resources, since the proposal would require a pro-rata sharing of FTRs with network service that does not have designated long-term network resources.<sup>11</sup> Cinergy cites to the filing's illustrative example as evidence that market participants who have built generation to serve their loads would have their FTRs prorated for no better reason than that they happen to be located in the same balancing authority with entities that choose to take the risk of purchasing power in the market at peak periods instead of constructing their own generation or contracting for it on a long-term basis. According to Cinergy, the fact that these entities must "lean" on the generation resources of others makes the proposal unjust and unreasonable. Such a loss of FTRs, these parties contend, reduces the economic value of FTRs and reduces the congestion hedge they are intended to provide. Ameren and Wisconsin Electric further assert that the proposal would put parties with designated long-term network resources at a disadvantage in serving their customers, would make serving their customers more expensive and would create a windfall for entities that have chosen not to identify seasonal or longer term network resources ahead of time, and therefore this result is unfair and discriminatory.

14. Ameren and Wisconsin Electric also argue that the proposal reduces the incentive to designate resources in advance of the FTR allocation or to participate in auctions to obtain long-term contracts to hedge risks, and therefore is not in the public interest.

15. FirstEnergy asserts that, by approving the proposal and therefore giving market participants that are "short" qualifying network resources a pro rata share of FTRs, the Commission would remove a consequence in Module E of the TEMT that market participants serving load within the Midwest ISO must comply with existing state and

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participants. The example also showed the commensurate reduction in FTRs from network resources for the other market participants.

<sup>11</sup> Ameren and Wisconsin Electric also argue that the proposal would cause even more pro-rationing since it could cause over-injecting at a generation bus in the simultaneous feasibility test for those network resources that are already fully committed.

Reliability Resource Organization reserve requirements.<sup>12</sup> Also, contends FirstEnergy, it is unclear how the proposed pro rata allocation of FTRs will impact the ability of market participants that have sufficient network resources to meet their own reserve requirement obligations, or to meet such obligations without additional expense.

16. Ameren and Wisconsin Electric recommend that the negative consequences of the proposal could be reduced if the proposal were modified to limit the allocation of short-term FTRs to market participants with less-than-seasonal network resources to those generation nodes that are not already fully subscribed, and that this approach could be used until the Midwest ISO is able to accommodate monthly allocations. These parties assert their modified approach would prevent market participants from deliberately withholding identification of network resources in the hope of getting more valuable FTRs than would be available in a slice-of-system allocation.

17. Ameren, Wisconsin Electric, Cinergy and FirstEnergy also contend that the stakeholder process was deficient in that it did not allow for full evaluation of options and market participant perspectives. Ameren and Wisconsin Electric recommend that the Commission order additional stakeholder processes, consider the convening of technical conferences or set the matter for hearing. Cinergy asserts the Midwest ISO did not support its proposal with evidence that it is just, reasonable and not unduly discriminatory and that the stakeholder process does not mean the proposal meets the statutory standard.<sup>13</sup> Cinergy considers this shortcoming a fatal flaw since the Commission found the Midwest ISO's existing tariff provisions for FTR allocation to be just and reasonable. FirstEnergy makes a similar point, arguing that the stakeholder process by itself does not establish the justness and reasonableness of a proposed revision to a rate schedule under the jurisdiction of the Commission.

18. Finally, Ameren and Wisconsin Electric consider the December 9 Filing to be deficient since it does not provide adequate information for parties to be able to understand the Midwest ISO proposal or to assess the related potential benefits or harm. For this reason, these parties contend that it is not appropriate to waive the prior notice requirement, as the Midwest ISO requests. Rather, they assert the 2006-2007 FTR allocation should proceed without the new mechanism while stakeholder or Commission procedures are underway, thereby avoiding the potential and immediate harm if the new proposal were implemented and cannot be corrected adequately through after-the-fact

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<sup>12</sup> TEMT, Module E, section 68.1.1a, third revised sheet no. 810.

<sup>13</sup> Cinergy citing *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 19 (2003), *order on reh'g*, 109 FERC ¶ 61,286 (2004).

adjustments. Similarly, Cinergy asserts the lack of a well-developed record does not provide the Commission with a basis for comparative evaluation of potential means of implementing the flexible approach desired by the Commission and recommends that the Commission reject the proposal outright and require the Midwest ISO to make and support a proposal by the summer, thereby allowing time for a hearing before the new methodology goes into effect. FirstEnergy agrees, stating that the Commission should reject the December 9 Filing, delete any registered FTR entitlements based on the proposal before the start of nominations for the third annual allocation, and require the Midwest ISO to re-submit its proposed revisions to the TEMT with appropriate support and require the Midwest ISO to either conduct a more thorough stakeholder process or participate in a Commission-directed technical conference.

19. Constellation supports the Midwest ISO proposal since it provides flexibility to load serving entities (LSEs) reserving network service on a daily basis, thereby making it possible for these market participants to serve load in retail choice states that allow load switching on a monthly and daily basis. Constellation asserts that the Midwest ISO proposal recognizes that transmission service can be reserved on a daily basis, and permits LSEs to obtain the FTRs necessary to hedge their existing and future potential load obligations, thereby receiving comparable treatment to LSEs with longer-term network integration transmission service(NITS) reservations. Constellation contends that since NITS reservations are available on a short-term, i.e., daily, weekly or monthly basis, entities utilizing short-term NITS reservations should be treated no differently than those utilizing long-term NITS reservations. Constellation believes that the Midwest ISO proposal recognizes the use of daily NITS reservations and thus corresponds to historic use of the system, regardless of whether that use is affected through long-term or short-term NITS reservations.

### **3. Discussion**

20. We reject the proposed tariff revisions and require the filing of two compliance filings, as discussed further below. We require that the compliance filing with a revised FTR allocation, discussed below, be filed within 15 days of the date of this order and that a further compliance filing be filed at least 90 days prior to the next annual FTR allocation.

21. While the Midwest ISO has held stakeholder meetings and developed a proposal to provide FTRs for seasonal and other less-than-annual periods, as we directed in the May 26 Order, we share the concerns of Ameren and Wisconsin Electric that the

proposed tariff revisions would reduce the value of FTRs and the congestion hedge they are intended to provide.<sup>14</sup>

22. We will not leave the pre-existing tariff provisions in effect through the FTR allocation currently in progress. The pre-existing tariff provisions do not allocate FTRs for less-than-seasonal service, a deficiency that the May 26 Order required the Midwest ISO to address, and therefore a continuation of the pre-existing tariff provisions would continue this gap in FTR treatment.

23. To ensure a better balance between maintaining the value of FTRs for market participants with long-term designated resources and providing FTRs for market participants with less-than-seasonal network resources, we will require, in a compliance filing to be submitted within 15 days, that the Midwest ISO first assign FTRs to market participants that have defined designated network resources of equal to and greater than seasonal length and then allocate any remaining FTRs for source points that are not fully subscribed to market participants with less-than-seasonal network resources. We clarify that the slice-of-system method for allocating FTRs can be used as long as the method does not reduce already granted seasonal or annual FTRs. In the event the method reduces already-granted FTRs, market participants with the less-than-seasonal FTRs should be given the opportunity to select other eligible source points in the balancing authority area up to its eligible quantity of FTRs and within the requirement of simultaneous feasibility.<sup>15</sup>

24. We are sensitive to the fact that the Midwest ISO is in the registration phase of its annual FTR allocation and that the process must be completed by February 22, 2006. However, we expect this revised procedure should be feasible inasmuch as it does not result in additional modeling requirements.

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<sup>14</sup> As noted by Ameren in its comments, the Midwest ISO agrees that its proposal could reduce the allocation of FTRs to market participants with long-term designated network resources. *See Ameren Comments, Declaration of Terry D. Lane at P 6.*

<sup>15</sup> We also note that our directive here is consistent with section 1233 of the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1233, 119 Stat. 594, 957 (2005), which adopted new section 217(b)(4) of the Federal Power Act, 16 U.S.C. § 824q(b)(4). That section directed the Commission to “exercise [its] authority” to “enable[] load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.”

25. Although a number of parties call for additional stakeholder or Commission processes to develop other FTR options, given the time constraints of the FTR allocation we do not consider further stakeholder conferences or technical conferences to be practical options. We also note that even though the Midwest ISO proposal represents a majority stakeholder vote, a stakeholder vote by itself is not a sufficient basis for finding a rate just and reasonable.<sup>16</sup>

26. While we agree with parties that a monthly FTR allocation would be ideal, we will not require the Midwest ISO to implement that allocation at this time, recognizing that the Midwest ISO indicates such an option would be unworkable. However, we will require the Midwest ISO to submit an evaluation of alternative methods to accommodate monthly FTRs in a further compliance filing 90 days prior to the next annual FTR allocation. For example, similar to the method in which allocated FTRs or their revenues are re-assigned to load that shifts to competitive suppliers, the holder of an annual FTR from a designated network resource could be required to submit a portion of the FTR sourced at that resource for reassignment and reconfiguration for any period in which that portion of the unit is another market participant's designated network resource.

The Commission orders:

(A) The Midwest ISO's proposed tariff provisions are hereby rejected, for the reasons discussed herein.

(B) The Midwest ISO is hereby required to file revised tariff sheets, as described in the body of this order, within 15 days of the date of this order.

(C) The Midwest ISO is hereby required to make a compliance filing, as described in the body of this order, 90 days prior to the next annual FTR allocation.

By the Commission.

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Magalie R. Salas,  
Secretary.

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<sup>16</sup> *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 19 (2003), *order on reh'g*, 109 FERC ¶ 61,286 (2004).